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6 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
7 AT TACOMA

8 MELISSA BELGAU, DONNA BYBEE,
9 RICHARD OSTRANDER, KATHRINE
NEWMAN, MIRIAN TORRES, GARY
HONC, and MICHAEL STONE,

10 Plaintiffs,

11 v.

12 JAY INSLEE, in his official capacity as
governor of the State of Washington,
13 DAVID SCHUMACHER, in his official
capacity as Director of the Washington
Office of Financial Management, JOHN
14 WEISMAN, in his official capacity as
Director of the Washington Department of
15 Health, CHERYL STRANGE, in her
official capacity as Director of the
16 Washington Department of Social and
Health Services, ROGER MILLAR, in his
17 official capacity as Director of the
Washington Department of Transportation,
18 JOEL SACKS, in his official capacity as
Director of the Washington Department of
19 Labor and Industries, and WASHINGTON
FEDERATION OF STATE EMPLOYEES
20 (AFSCME, COUNSEL 28) a labor
corporation,

21 Defendants.
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CASE NO. 18-5620 RJB

ORDER DENYING PLAINTIFFS'
MOTION FOR A TEMPORARY
RESTRAINING ORDER WITHOUT
PREJUDICE

1 THIS MATTER comes before the Court on the Plaintiffs' Motion for Temporary
2 Restraining Order ("TRO"). Dkt. 2. The Court has considered the pleadings filed regarding the
3 motion and the remaining file.

4 Plaintiffs, who are Washington State employees, filed this putative class action on August
5 2, 2018, asserting that the Defendants are violating their first amendment rights by continuing to
6 deduct union dues/fees from their wages even "after the U.S. Supreme Court issued *Janus v.*
7 *AFSCME, Council 31*, on June 27, 2018, despite the fact that Plaintiffs have not clearly and
8 affirmatively consented to the deductions by waiving the constitutional right to not fund union
9 advocacy." Dkt. 1 (citing *Janus v. AFSCME, Council 31*, 138 S.Ct. 2448 (2018)).

10 Late on August 2, 2018, Plaintiffs filed a motion seeking a TRO "enjoining Defendants
11 from deducting union dues/fees from the wages of any Washington State employee in a
12 bargaining unit listed in Appendix A to the 2017-2019 [Collective Bargaining Agreement
13 ("CBA")] for whom Defendants cannot provide clear and compelling evidence that he or she
14 clearly and affirmatively consented, on or after June 27, 2018, to the deduction of union dues by
15 waiving his or her right to not fund union advocacy, and from preventing Plaintiffs and state
16 employees from resigning union membership." Dkt. 2, at 2. Plaintiffs served the motion on the
17 Defendants Friday. Dkt. 3, at 1-2. Plaintiffs move for the TRO to take effect before August 10,
18 2018 (the Plaintiffs' next pay day). Dkt. 2. In accord with Local Rule W.D. Wash. 65, the State
19 Defendants and union filed a joint response on Sunday, August 5, 2018. Dkt. 10. They oppose
20 the motion. *Id.*

21 Plaintiffs have failed to demonstrate irreparable harm. Accordingly, the motion for TRO
22 (Dkt. 2) should be denied without prejudice.

1 **Standard on Motion for TRO and Preliminary Injunction.** Pursuant to Fed. R. Civ.

2 P. 65 (b)(1):

3 The court may issue a temporary restraining order without written or oral notice
4 to the adverse party or its attorney only if:

5 (A) specific facts in an affidavit or a verified complaint clearly show that
6 immediate and irreparable injury, loss, or damage will result to the movant
7 before the adverse party can be heard in opposition; and

8 (B) the movant’s attorney certifies in writing any efforts made to give
9 notice and the reasons why it should not be required.

10 Under Rule 65 (a), “the court may issue a preliminary injunction only on notice to the adverse
11 party.” Motions for preliminary injunction are noted for consideration on third Friday after the
12 motion has been filed and served. Local Rule W.D. Wash. 7 (d)(3).

13 The standard to grant either a TRO or a motion for preliminary injunction is the same.
14 *Los Angeles Unified Sch. Dist. V. United States Dist. Court*, 650 F.2d 1004, 1008 (9th Cir. 1980).
15 Plaintiffs seeking a preliminary injunction must establish one of two tests. *All. for the Wild*
16 *Rockies v. Pena*, 865 F.3d 1211, 1217 (9th Cir. 2017). The first test requires Plaintiffs to show:
17 (1) that they are “likely to succeed on the merits,” (2) that they are “likely to suffer irreparable
18 harm in the absence of preliminary relief,” (3) “the balance of equities tips in [their] favor,” and
19 (4) “an injunction is in the public interest.” *Coffman v. Queen of Valley Med. Ctr.*, 895 F.3d 717,
20 725 (9th Cir. 2018)(citing *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7 (2008) (*internal*
21 *quotation marks omitted*)). Under the second variant of the 9th Circuit’s test for a preliminary
22 injunction, the “sliding scale” version of the *Winter* standard, “if a plaintiff can only show that
23 there are serious questions going to the merits—a lesser showing than likelihood of success on
24 the merits—then a preliminary injunction may still issue if the balance of hardships tips sharply

1 in the plaintiff's favor, and the other two *Winter* factors are satisfied." *All. for the Wild Rockies*,
2 at 1217 (*internal quotation marks and citations omitted*).

3 **Decision on Motion.** Plaintiffs' motion for a TRO (Dkt. 2) should be denied. Plaintiffs
4 assert that they are paid on the 10th and 25th of every month. Dkt. 2, at 18. They maintain that
5 absent injunctive relief the State will continue to deduct union dues/fees from their wages and
6 that those deductions violate their first amendment rights resulting in irreparable harm. Dkt. 2, at
7 18.

8 The Defendants state in their response that the union has agreed to place the Plaintiffs'
9 dues/fees in escrow in an interest-bearing account until this lawsuit is decided. Dkt. 10-1. The
10 Plaintiffs' money will not be used by the union in any manner until the case is decided. *Id.*
11 Accordingly, the Plaintiffs have failed to demonstrate that they are "likely to suffer irreparable
12 harm in the absence of preliminary relief." Moreover, under Fed. R. Civ. P. 65 (c), "the court
13 may issue a preliminary injunction only if the movant gives security in an amount that the court
14 considers proper." Plaintiffs state that they cannot afford to post a security. Dkt. 2. The
15 Defendants' offer to hold the money at issue in escrow provides a good resolution for Rule 65
16 (c)'s requirements.

17 Moreover, although Plaintiffs seek an order for all state employees' dues payments, there
18 is no showing that they are entitled to such broad relief at this stage. This case has been filed as
19 a putative class action. Such extensive relief is premature at this point in the litigation.

20 **Other issues.** The Plaintiffs filed their motion for an "emergency" TRO late in the day
21 on Thursday despite knowing about the *Janus* case in late June, after several pay periods had
22 elapsed. The Plaintiffs didn't serve the Defendants until the next day. This forced the
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1 Defendants to file a response on a Sunday. The undersigned takes a dim view of this type of
2 litigation tactic.

3 **ORDER**

4 It is **ORDERED** that:

- 5 • Plaintiffs' Motion for Temporary Restraining Order (Dkt. 2) **IS DENIED**
6 **WITHOUT PREJUDICE.**

7 The Clerk is directed to send uncertified copies of this Order to all counsel of record and
8 to any party appearing *pro se* at said party's last known address.

9 Dated this 6th day of August, 2018.

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11 ROBERT J. BRYAN
12 United States District Judge
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